



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Chart Industries, Inc.

File: B-288248

Date: September 28, 2001

Don Debelak for the protester.

James L. Weiner, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.

Louis A. Chiarella, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's downgrading of protester's technical proposal is unobjectionable where the record establishes that the evaluation is reasonable and consistent with the stated evaluation criteria; protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable.

DECISION

Chart Industries, Inc. protests the award of a contract to NorthStar, Inc. under request for proposals (RFP) No. N1248-01-0007, issued by the National Park Service, Department of the Interior, for the construction of a natural gas fueling station at Grand Canyon National Park, Arizona. Chart contends that the agency's evaluation of its technical proposal was unreasonable.

We deny the protest.

The RFP, issued March 15, 2001 and amended April 24, contemplated the award of a fixed-price contract for the construction of a compressed natural gas and liquefied natural gas fueling station, with four 1-year options for maintenance. The evaluation factors were cost, worth 40 points, and technical, worth 60 points. The technical subfactors were: implementation and operation plan (including station design, installation, start-up, operations, and maintenance), worth 30 points; experience of firm and key staff, worth 15 points; and past performance on similar contracts, worth 15 points. The RFP also specified that offerors "should ensure that their [technical] proposals are clear, concise, and fully address all of the evaluation factors," and that

the technical proposals “must fully conform to the specifications/statement of work clearly defining an approach and methodology.” RFP § L.1.

Four offerors, including Chart and NorthStar, responded to the RFP by the May 4 due date. Each member of the agency’s technical panel assigned numerical ratings for each proposal under each of the technical evaluation factors. The total evaluated scores were then upwardly adjusted by a common factor, so that the highest score was 60 points. The contracting officer separately evaluated prices by assigning the 40 points available for price to the lowest-priced proposal and proportionately lower scores to higher-priced proposals. The following table shows the overall ranking of Chart’s and NorthStar’s proposals:

	Price (Score)	Technical	Total
Chart	\$1,158,451 (40)	44.2	84.2 points
NorthStar	\$1,431,595 (32)	60.0	92.0 points

Agency Report, Tab 11, Memorandum of Negotiations, at 3.

The technical panel noted that while Chart’s technical proposal was very general and lacking in specifics, NorthStar’s technical proposal was thoroughly detailed and accurately responded to the particulars of the RFP. The contracting officer awarded the contract to NorthStar based on a determination that NorthStar’s superior technical proposal outweighed the associated price advantage of Chart’s lower-rated proposal. After receiving a debriefing from the National Park Service, Chart filed this protest with our Office.

Chart protests the agency’s evaluation of its proposal and argues that, but for the agency’s improper evaluation, its proposal would have been selected for award.¹

In reviewing protests challenging an agency’s evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency’s evaluation and selection decision to ensure that they are reasonable and consistent with the solicitation’s stated evaluation factors. Citywide Managing Servs. of Port Wash., Inc., B-281287.12, B-281287.13, Nov. 15,

¹ Chart makes numerous allegations of improper assessments of specific aspects of its technical proposal, which it places in three general categories: (1) faults in its proposal caused by alleged solicitation ambiguities and/or missing information; (2) an evaluation that was inconsistent with the criteria and factors set forth in the RFP; and (3) an evaluation that was cursory in nature. To the extent that Chart is challenging defects in the solicitation, that protest is untimely; under our Bid Protest Regulations, a protest against alleged solicitation improprieties must be filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2001).

2000, 2001 CPD ¶ 6 at 10. The protester bears the burden of proving that an evaluation was unreasonable; mere disagreement with the agency does not render the evaluation unreasonable. Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1996, 97-1 CPD ¶ 135 at 3.

As illustrated by the following examples, we find that the agency's evaluation was reasonable, given the evaluators' reasonable conclusions that Chart's proposal (in contrast to that of the awardee) lacked, in many instances, sufficient or accurate detail to justify a higher point score.²

For example, as noted, one of the technical evaluation subfactors set forth in the RFP was station design. This aspect of Chart's technical proposal consists primarily of a general summary of major components and includes one computerized site drawing. Chart's drawing is devoid of any labeling, fails to illustrate the canopy feature required by the RFP, and gives no dimensions, equipment locations, relation to the present fueling site, or traffic flow patterns. Agency Report, Tab 5, Chart's Proposal, at 43. The technical panel noted these shortcomings and found Chart's proposal in this regard to be very vague. Agency Report, Tab 10, Summary of Technical Evaluation, at 3. The protester disagrees with this evaluation and contends that the design drawing matches the design description in the text of its proposal, and that in any case the RFP did not require drawings. However, since the text of Chart's station design also does not address the aforementioned deficiencies, the agency reasonably downgraded this aspect of Chart's proposal.

As another example, the RFP set forth the electrical connections currently available at the proposed fueling station site. The specifications informed offerors that there existed 120/208-volt power within 50 feet of the proposed site. RFP § C.3. Chart based its technical proposal upon the stated assumption that 480-volt electric service was available within 25 feet of the designated site area. Agency Report, Tab 5, Chart's Proposal, at 40, 76. The technical panel specifically noted that Chart's assumption regarding available electrical service was incorrect and inconsistent with the language of the RFP. Agency Report, Tab 10, Summary of Technical Evaluation, at 3. We view this as a reasonable basis for the agency to downgrade Chart's proposal.

As a last example, the RFP set forth the minimum training courses that offerors were required to provide in connection with station start-up plans. This included a 5-day course on fueling station operation and maintenance, as well as a 4-hour course on emergency response team training. RFP § C.4.f. In response to this RFP requirement, Chart's technical proposal offers a series of 1-, 2-, and 3-hour training courses that do not individually or collectively fulfill the RFP requirements. Agency Report, Tab 5, Chart's Proposal, at 79. Though Chart describes its training as widely

² Although we do not here specifically discuss all of Chart's complaints about its technical evaluation, we have considered all of them and find them without merit.

praised, proven effective, and time tested, the protester fails to demonstrate how its proposal complies with the solicitation. Thus, the agency reasonably downgraded Chart's proposal.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Chart alleges that it offered a better, alternative method by which to accomplish fueling station training. However, unless a specification is unduly restrictive or exceeds the agency's minimum needs, agencies have the discretion to define their own requirements. APTUS Co., B-281289, Jan. 20, 1999, 99-1 CPD ¶ 40 at 4.